

04-5286 DODD V. UNITED STATES

DECISION BELOW: 365 F3d 1273

LOWER COURT CASE NUMBER: 02-16134

QUESTION PRESENTED:

A federal prisoner may file a motion to vacate sentence under 28 U.S.C. § 2255 para. 6(3) within one year of "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." State prisoners may do the same under nearly identical language found in 28U.S.C. § 2244(d)(I)(C). The Question Presented is:

Does the one-year limitations period in 28 U.S.C. § 2255 para. 6(3) begin to run (i) when either the Court or the controlling circuit court has held that the relevant right applies retroactively to cases on collateral review (as the Third, Fourth, Sixth, Seventh, and Ninth Circuits hold), or instead (ii) when the Court recognizes a new right, whether or not it is made retroactively applicable to cases on collateral review (as the Fifth and Eleventh Circuits hold, and the Second and Eighth Circuits have stated in dicta)?

CERT. GRANTED 11/29/2004